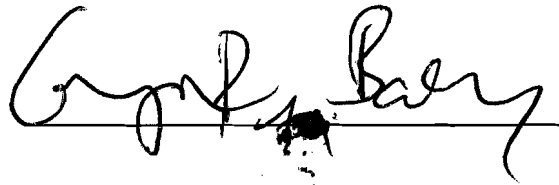


VERIFICATION

I, Gregory Roger Babyak, do declare and hereby state under penalty of perjury, as follows:

1. I am Head of Government Affairs for Bloomberg L.P.
2. I have read the foregoing Complaint. To the best of my knowledge, information, and belief, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. It is not interposed for any improper purpose.

June 13, 2011

A handwritten signature in black ink, appearing to read "Gregory Babyak", written over a horizontal line.

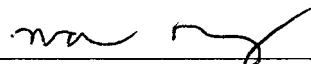
Gregory Roger Babyak

CERTIFICATE OF SERVICE

I, Matthew Berry, a partner in the law firm Patton Boggs LLP, do hereby certify that the foregoing "Program Carriage Complaint" was served on the parties listed below by Federal Express this 13th day of June 2011.

Mr. Neil Smit
President
Comcast Cable Communications
One Comcast Center
Philadelphia, PA 19103-2838

Arthur Block
Senior Vice President
General Counsel and Secretary
Comcast Corporation
One Comcast Center
Philadelphia, PA 19103-2838

A handwritten signature in black ink, appearing to read "Matthew B. Berry", is written over a horizontal line.

Matthew B. Berry

FOR PUBLIC INSPECTION

EXHIBIT A

Exhibit A

Address and Telephone Number of Complainant and Defendant

Complainant: Bloomberg L.P.
731 Lexington Avenue
New York, NY 10022
(212) 318-2000

Defendant: Comcast Cable Communications, LLC
Subsidiary of Comcast Corporation
One Comcast Center
Philadelphia, PA 19103
(215) 286-1700

FOR PUBLIC INSPECTION

EXHIBIT B

VIA E-MAIL & FEDERAL EXPRESS

Mr. Neil Smit
President
Comcast Cable Communications
One Comcast Center
1701 JFK Boulevard
Philadelphia, PA 19103-2838

Dear Mr. Smit:

On behalf of Bloomberg L.P. ("Bloomberg"), and pursuant to 47 C.F.R. § 76.1302(b)¹, Bloomberg hereby provides notice to Comcast Cable Communications, LLC ("Comcast") that it intends to file a complaint against Comcast with the Federal Communications Commission ("FCC") based on Comcast's failure to comply with the news neighborhooding condition set forth in the Commission's Memorandum Opinion and Order granting the application of Comcast Corporation, General Electric Company ("GE"), and NBC Universal, Inc. ("NBCU") to transfer control of licenses from GE to Comcast,² unless Comcast advises in writing within ten (10) days of this letter that it agrees to commence implementation of the news neighborhooding condition by placing Bloomberg's video programming channel, Bloomberg Television ("BTV"), in its existing news neighborhoods, as defined herein, on all of its systems in the 35 most-populous DMAs in the United States within no more than sixty (60) days of this letter.

As you are aware, by letter dated January 21, 2011, Comcast (along with GE and NBCU) represented to the Commission that they "accept as binding the conditions and enforceable commitments included in the MO&O and expressly waive any right they may have to challenge the Commission's legal authority to adopt and enforce such conditions

¹ 47 C.F.R. § 76.1302(b).

² See *In the Matter of Applications of Comcast Corp., General Electric Co., and NBC Universal Inc. For Consent to Assign Licenses and Transfer Control of Licenses, Memorandum Opinion and Order*, MB Docket No. 10-56 (rel. Jan. 20, 2011) (the "FCC Order" or the "MO&O"), at 121 (App. A, Sec. III.2); see also *id.* at 51, ¶ 122. Such application, the "Merger Application."

Mr. Neil Smit
May 26, 2011
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and commitments.”³ Notwithstanding this representation, Comcast violated the express conditions and directive in the FCC Order that independent news channels, such as BTV, must be included in existing news neighborhoods on Comcast cable systems. Comcast took this step less than three months after accepting as binding the Commission’s conditions. Bloomberg has no choice but to initiate the process of filing a complaint with the Commission because Comcast has refused to discuss in any serious manner implementation of the news neighborhooding condition with Bloomberg. Indeed, rather than taking steps to comply with the FCC Order, Comcast has taken the position that the Commission’s express direction on the neighborhooding of news channels does not require Comcast to do anything more than it was already doing and, in fact, requires no action by Comcast.

Because of the importance of a prompt resolution of this issue, Comcast’s clear and direct violation of the express terms of the FCC Order, and our hope that Comcast will reverse its position without the necessity of a formal complaint, we set forth below certain relevant facts and circumstances for your consideration.

In the FCC Order, the Commission approved what has been commonly referred to as the Comcast-NBCU merger with conditions designed to address transaction-specific harms, safeguard competition and protect the public interest.

The Comcast-NBCU merger resulted in Comcast, the nation’s largest cable operator, acquiring a controlling ownership interest in CNBC, the nation’s top-ranked business news network. CNBC is BTV’s dominant competitor. In the FCC Order, the Commission recognized that the merger would increase both Comcast’s incentive to discriminate against competitive programming as well as its ability to do so.⁴ The Commission explicitly found that “Bloomberg TV is likely a close substitute for Comcast-NBCU’s CNBC and CNBC World Networks”⁵ and that: “By foreclosing or

³ Letter from Kathryn A. Zachem, Vice President, Regulatory and State Legislative Affairs, Comcast Corporation; Ronald A. Stern, Vice President and Senior Competition Counsel, General Electric Company; and Richard Cotton, Executive Vice President and General Counsel, NBC Universal, Inc. to Marlene H. Dortch, Secretary, Federal Communications Commission, MB Docket No. 10-56 (filed Jan. 21, 2011).

⁴ See *FCC Order* at 47-48, ¶¶ 116-118.

⁵ *Id.* at 49, ¶ 119.

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disadvantaging rival programming networks, Comcast can increase subscribership or advertising revenues for its own programming content.”⁶

In the section entitled “Conditions Concerning Carriage of Unaffiliated Video Programming,”⁷ the Commission required that Comcast “not discriminate in Video Programming distribution on the basis of affiliation or non-affiliation of a Video Programming Vendor in the selection, price, terms or conditions of carriage (including but not limited to on the basis of channel or search result placement).”⁸ In addition, the Commission determined that because of the “special importance of news programming to the public interest,”⁹ independent news channels would be required to be included in any news and/or business news neighborhoods on Comcast cable systems. These conditions were the only carriage conditions imposed upon Comcast that Comcast did not offer as voluntary commitments, and as such, they were specifically highlighted by the Commission in its press release accompanying the adoption of the FCC Order.¹⁰

As a result of Comcast’s ability and incentive to act at the expense of the independent news channels, the Commission adopted a condition particularly designed to protect independent sources of news programming. The condition requires: “If Comcast now or in the future carries news and/or business news channels in a neighborhood, defined as placing a significant number or percentage of news and/or business news channels substantially adjacent to one another in a system’s channel lineup, Comcast must carry all independent news and business news channels in that neighborhood.”¹¹ BTV qualifies as an independent news channel for purposes of the FCC Order because it is

⁶ *Id.* at 50, ¶ 119.

⁷ *FCC Order* at 121-22 (App. A., Sec. III).

⁸ *Id.* at 121 (App. A. Sec. III.1).

⁹ *Id.* at 50, ¶ 122.

¹⁰ See FCC Public Notice, *FCC Grants Approval of Comcast-NBCU Transaction*, Jan. 18, 2001, at 2 (“In light of the significant additional video programming Comcast will control after the merger with NBCU—programming that may compete with third-party programming Comcast currently carries or otherwise would carry on its MVPD service—the Commission requires that Comcast not discriminate in video programming distribution on the basis of affiliation or nonaffiliation with Comcast-NBCU. Moreover, if Comcast ‘neighborhoods’ its news (including business news) channels, it must include all unaffiliated news (or business news) channels in that neighborhood.”).

¹¹ See *id.* at 121 (App. A, Sec. III.2); see also *id.* at 51, ¶ 122.

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unaffiliated with Comcast-NBCU or any of its affiliates or subsidiaries, is unaffiliated with any of the top fifteen programming networks, as measured by annual revenues, and has programming focused on public affairs, business or local news reporting and analysis during the hours 6:00 a.m. through 4:00 p.m. in the U.S. Eastern Time Zone.¹²

Following the closing of the Comcast-NBCU merger, Dan Doctoroff, President and Chief Executive Officer of Bloomberg L.P., reached out on March 3, 2011 to Steve Burke, Executive Vice President of Comcast Corporation, Comcast's parent, to initiate discussions about implementing the Commission's news neighborhooding condition. Mr. Burke told Mr. Doctoroff that Comcast expected to comply with all of the conditions contained in the FCC Order but that Neil Smit, then recently appointed President of Comcast, was the appropriate contact point within Comcast for discussing next steps.

Shortly thereafter, on March 9, 2011, Dan Doctoroff and Andy Lack, CEO of Bloomberg Media Group, had a brief telephone conversation with Neil Smit attempting to begin substantive discussions about implementing the news neighborhooding condition. Mr. Smit indicated that the topic was a new issue for him and that he would need time to evaluate it. In order to facilitate discussions between Bloomberg and Comcast, Mr. Smit asked Mr. Doctoroff to send him a letter setting forth Bloomberg's view of what the news neighborhooding condition required Comcast to do with respect to BTV. Mr. Smit reiterated that Comcast fully intended to abide by the conditions set forth in the FCC Order.

The next day, Dan Doctoroff followed up on the previous day's conversation by sending a letter to Neil Smit, which is attached to this prefiling notice as Exhibit A. In this correspondence, Mr. Doctoroff explained that the plain terms of the news neighborhooding condition required Comcast to move BTV into any news neighborhood that Comcast has on any system "now or in the future", with citations to the provisions regarding neighborhooding in the FCC Order. Mr. Doctoroff also provided Comcast with examples of markets where Comcast now has news neighborhoods that do not include BTV. (As expressly indicated in the letter, this list was not intended to be exhaustive but rather illustrative in order to provide guidance to Comcast in implementing the news neighborhooding condition.) Mr. Doctoroff concluded the letter by requesting that Comcast place BTV in all news neighborhoods on Comcast cable

¹² See *id.* at 51, n. 292. BTV is a worldwide 24-hour business and financial television network, whose programming is created exclusively by Bloomberg's own Bloomberg News® service.

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systems within three months and stating that he looked forward to working with Mr. Smit to effectuate the FCC's Order.

Neither Mr. Smit nor anyone else at Comcast ever responded in writing to Mr. Doctoroff's letter. However, on March 18, 2011, Dan Doctoroff and Andy Lack spoke again to Neil Smit. During this call, Mr. Smit indicated that Comcast had a number of people studying the issue, including looking into the technological issues associated with neighborhooding, and that Mr. Smit needed more time to respond to Bloomberg with respect to other issues.

Approximately two weeks later, on April 4, 2011, Dan Doctoroff and Andy Lack had their final telephone conversation with Neil Smit prior to this prefiling notice. During this call, Mr. Smit took the position that the FCC Order did not require Comcast to do anything that it was not already doing with respect to the placement of independent news channels. Therefore, he said that there was nothing to implement with respect to the news neighborhooding condition and that Comcast had no interest in discussing implementation of the FCC Order with Bloomberg. Among other things, Mr. Smit took the position that the news neighborhooding condition applied only to news neighborhoods that might be created in the future, not to existing news neighborhoods, and that Comcast currently does not have any news neighborhoods on its cable systems.

We believe Comcast's position is flatly inconsistent with the express (and very plain) terms of the FCC's Order. As an initial matter, Comcast's claim that the news neighborhooding condition does not apply to existing channel groupings is directly contradicted by the clear language of the FCC's Order, which explicitly states that the news neighborhooding condition is triggered "if Comcast now or in the future carries news and/or business news channels in a neighborhood."¹³ (Emphasis added). Furthermore, Comcast's argument that it currently does not have any news neighborhoods on its cable systems does not reflect the reality of its channel lineups. As Bloomberg demonstrated in Dan Doctoroff's March 10, 2011 correspondence to Neil Smit, there are numerous markets where Comcast presently groups a significant number and percentage of news and business news channels in adjacent or substantially adjacent channel positions. In the Seattle, Washington DMA, for example, Comcast has five consecutive news channels on all of its systems: CNN-44; CNN Headline News-45;

¹³ See *supra* note 1.

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CNBC-46; MSNBC-47; and Fox News-48.¹⁴ Likewise, in Washington, D.C., Comcast's channel lineup has five consecutive news channels: CNN Headline News-35; CNN-36; Fox News-37; MSNBC-38; and CNBC-39.¹⁵ These groupings (and many others on numerous other systems) meet the Commission's (as well as any common sense) definition of a news neighborhood.

As noted above, in the FCC Order, the Commission defined a "news neighborhood" as "placing a significant number or percentage of news and/or business news channels substantially adjacent to one another in a system's channel lineup."¹⁶ For purposes of implementation of the news neighborhooding condition, a news neighborhood should be defined to exist whenever there are four or more news channels consecutively placed or wherever there are at least four news channels located in any block of five adjacent channel positions. While a channel grouping need only contain a significant number or significant percentage of news channels to meet the definition of neighborhood set forth in the FCC Order, neighborhoods of this size rise above that standard because they contain both a significant number and a significant percentage of news channels that are substantially adjacent to one another.¹⁷

There can be no doubt that Bloomberg has the right and necessary standing to bring a program carriage complaint before the FCC against Comcast. Bloomberg is a "video programming vendor" as defined by the FCC Order and Section 616 of the Communications Act because it is engaged in the production, creation and wholesale distribution of video programming for sale.¹⁸ Comcast is a "multichannel video programming distributor" ("MVPD") because it is a cable operator "engaged in the business of making available for purchase, by subscribers multiple channels of video

¹⁴ See Exhibit A, at 3.

¹⁵ See Exhibit A, at 3. Comcast has a similar channel lineup in the other systems it operates in the Washington DMA, including but not limited to Montgomery County, Maryland, Arlington, Virginia and Alexandria, Virginia.

¹⁶ See FCC Order at 121 (App. A, Sec. III.2); see also *id.* at 51, ¶ 122.

¹⁷ In the FCC Order, the Commission specifically recognized that business news channels "could be considered close substitutes by viewers." FCC Order at 49, n.284. Accordingly, a business news neighborhood exists for purposes of the neighborhooding condition whenever a significant number or percentage of business news channels are substantially adjacent to one another in a system's channel lineup. At this time, Bloomberg has not identified any existing business news neighborhoods on Comcast systems which do not include BTV. However, should Comcast create such neighborhoods, Bloomberg intends to request BTV's inclusion in these channel groupings.

¹⁸ 47 U.S.C. § 536(b); FCC Order at 121 (App. A, Sec. I). See also 47 C.F.R. § 76.1300(e).

Mr. Neil Smit
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programming.”¹⁹ Comcast’s refusal to include BTV in existing news neighborhoods on its cable systems violates the neighborhooding condition contained in the FCC Order, and the FCC Order specifically provided that violations of the neighborhooding condition could be submitted to the Commission for resolution under its program carriage complaint procedures.²⁰

Bloomberg attempted to work cooperatively with Comcast to implement the Commission’s news neighborhooding condition. However, rather than working with Bloomberg as required by the FCC Order to move BTV into news neighborhoods Comcast now carries on its cable systems, Comcast has refused to discuss in any serious manner compliance with the Commission’s requirements and taken the position that those requirements are essentially meaningless. Comcast’s refusal even to attempt to comply with the news neighborhooding condition has left Bloomberg with no choice but to send this prefiling notice.

As discussed above, the Commission has required that if Comcast “now or in the future carries news and/or business news channels in a neighborhood . . . Comcast must carry all independent news and business news channels in that neighborhood.”²¹ Comcast is demonstrably now carrying news and/or business news channels in neighborhoods on cable systems throughout the country. Yet, Comcast refuses to include BTV, an independent news channel, in those news neighborhoods.

This refusal to place BTV in news neighborhoods places Comcast in direct violation of the FCC Order approving the Comcast-NBCU merger. Therefore, unless Comcast advises in writing within 10 days that it agrees to commence implementation of the news neighborhooding condition by placing BTV in its existing news neighborhoods on all systems in the 35 most-populous DMAs in the United States within 60 days of this letter, Bloomberg will submit this “dispute to the Commission in accordance with the Commission’s program carriage complaint procedures, 47 C.F.R. § 76.1302.”²²

¹⁹ 47 C.F.R. § 76.1300(d).

²⁰ *FCC Order*, at 122 (App. A, Sec. III.4).

²¹ *FCC Order*, at 121 (App. A, Sec. III.2).


²² *See id.* at 122 (App. A, Sec. III.4).

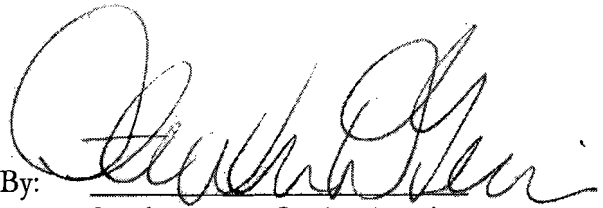
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If there are any questions regarding this matter, please direct them to Stephen Díaz Gavin, Patton Boggs LLP, at 202-457-6340 or by email at sgavin@pattonboggs.com.

Very truly yours,

BLOOMBERG L.P.

By: 
David Boies, Esquire
BOIES, SCHILLER & FLEXNER LLP
333 Main Street
Armonk, NY 10504

By: 
Stephen Díaz Gavin, Esquire
PATTON BOGGS LLP
2550 M Street, N.W.
Washington, D.C. 20037-2350

Enclosure

cc: The Hon. Julius Genachowski, Chairman, Federal Communications Commission
The Hon. Michael J. Copps, Commissioner, Federal Communications Commission
The Hon. Robert M. McDowell, Commissioner, Federal Communications Commission
The Hon. Mignon L. Clyburn, Commissioner, Federal Communications Commission
Mr. Daniel Doctoroff
Mr. Andrew Lack
Michael Hammer, Esquire
Kathryn Zachem, Esquire

EXHIBIT A

Bloomberg

Stuenkel LLP

731 Lexington Avenue
New York, NY 10022

tel: 212.312.3000
fax: 212.312.3000

March 10, 2011

Neil Smit
President
Comcast Cable Communications
One Comcast Center
1701 JFK Boulevard
Philadelphia, PA 19103-2838

Dear Neil:

It was good to talk to you yesterday about implementation of the decision by the FCC approving Comcast's acquisition of control of NBC Universal (the "Merger").

You asked how we view the neighborhooding requirement applicable to independent news channels, such as Bloomberg Television ("BTV"). As you are aware, the Commission conditioned its approval of the Merger on the following requirement: "If Comcast now or in the future carries news and/or business news channels in a neighborhood, defined as placing a significant number or percentage of news and/or business news channels substantially adjacent to one another in a system's channel lineup, Comcast must carry all independent news and business news channels in that neighborhood."¹ The Commission went on to say that it had adopted this requirement in light of the "special importance of news programming to the public interest."² BTV is clearly an independent news channel for purposes of this condition because it: (1) is unaffiliated with Comcast-NBCU or any of its affiliates or subsidiaries; (2) is unaffiliated with one of the top fifteen programming networks, as measured by annual revenues; and (3) has programming focused on public affairs and business reporting and analysis during the hours 6:00 a.m. through 4:00 p.m. in the U.S. Eastern Time Zone.³

This condition applies to any news neighborhood that Comcast carries "now or in the future."⁴ Accordingly, the FCC Order requires Comcast to move BTV now into any news neighborhood that currently exists on any Comcast system.

¹ *In the Matter of Applications of Comcast Corp., General Electric Co., and NBC Universal Inc. For Consent to Assign Licenses and Transfer Control of Licenses*, Memorandum Opinion and Order, MB Docket No. 10-56 (rel. Jan. 20, 2011), App. B, at 121, *see also*, at 51.

² *Id.*, at ¶ 122.

³ *App'd at* 51, n. 393.

⁴ *Id.*, ¶ 122.

Bloomberg

I have attached a list of markets where Comcast currently has news neighborhoods into which BTV must be moved under the terms of the FCC's Order. This list is not intended to be exhaustive, but rather illustrative of systems where Comcast currently carries news neighborhoods in order to provide guidance to Comcast in implementing the news neighborhooding condition. On our initial review, most of these channel lineups group at least four of the major news channels in contiguous and adjacent channel positions, clearly constituting "a significant number or percentage of news and/or business news channels" as established by the FCC Order.

Bloomberg recognizes that the FCC regulations require 30 days notice to subscribers of channel changes. In light of that notice period, we believe it reasonable to request that BTV be placed into all news neighborhoods as soon as possible but certainly no later than three months from today.

I look forward to continuing our discussions next week. Congratulations again on your new position. We all look forward to working with you to effectuate the FCC Order.

Regards,

A handwritten signature in black ink, appearing to read "Dan", written over the word "Regards,".

Daniel Doctoroff

Attachment: Examples of Markets with News Neighborhoods of at Least 4 News Channels

1. Seattle-Tacoma, WA DMA

Grays County, King County, Lewis County, Pacific County, and Thurston County

(CNN-44, CNN Headline News-45, CNBC-46, MSNBC-47, Fox News-48)

2. Washington, DC DMA

Washington, DC

(CNN Headline News-35, CNN-36, Fox News-37, MSNBC-38, CNBC-39)

Arlington, Alexandria, Prince George's County

(CNN Headline News-28, CNN-29, MSNBC-30, CNBC-31, Fox News-32)

Reston/Prince William County

(CNN-35, CNN Headline News-36, CNBC-37, MSNBC-38, Fox News-39)

Winchester

(CNN Headline News-38, CNN-39, Fox News-40, CNBC-41, MSNBC-42)

Spotsylvania County

(CNN Headline News-28, CNN-29, MSNBC-30, CNBC-31, Fox News-32)

Montgomery County

(CNBC-60, MSNBC-61, CNN-62, CNN Headline News-63)

3. San Francisco-Oakland-San Jose, CA DMA

San Francisco, Oakland, Berkeley, San Jose

(CNN-56, CNN Headline News-57, CNBC-58, Fox News-59, MSNBC-60)

Fort Bragg, Willits

(CNN Headline News-40, CNN-41, CNBC-42, MSNBC-43)

Sonoma, Calistoga, Napa Valley

(CNN-56, CNN Headline News-57, CNBC-58, MSNBC-60)

4. Atlanta, GA DMA

Atlanta, Cobb County, East Point, Stone Mountain, Walton

(CNN-34, CNN Headline News-35, CNBC-36, Fox News-37)

5. Chicago, IL DMA

City of Chicago Areas 1, 4, and 5

(CNN-57, CNBC-58, MSNBC-59, Fox News-60, CNN Headline News-61)

Hammond and East Chicago

(CNN-43, CNN Headline News-44, CLTV-45, Fox News-46, MSNBC-47, CNBC-48)

LaSalle, Mendota

(CNN Headline News-56, CNBC-57, CNN-58, MSNBC-59, Fox News Channel-60)

Carpentersville, Aurora, Naperville, Wheaton

(CLTV-53, Fox News-54, CNN-55, CNN Headline News-56, MSNBC-58, CNBC-59)

Romeoville

(CNN Headline News-35, CNN-36, CLTV-38, CNBC-39)

6. Philadelphia, PA DMA

North/West/Northwest Philadelphia

(CNN-26, CNN Headline News-27, MSNBC-28, CNBC-29)

Montgomery County (King of Prussia/Norristown)

(Fox News Channel-40, CNN-41, CNN Headline News-42, CNBC-43, MSNBC-44)

Kent County

(Fox News-25, CNN-26, Headline News-27, MSNBC-28, CNBC-29)

Pleasantville, NJ

(FOX News Channel-55, CNN-56, CNN Headline News-57, CNBC-58, MSNBC-59)

7. Boston, MA DMA

Cambridge, Weymouth, Lexington, Waltham

(FOX News-41, CNN-42, CNN Headline News-43, C-SPAN-44, CNBC-46)

Everett, Malden, Medford, Melrose, Winthrop

(FOX News-41, CNN-42, CNN Headline News-43, C-SPAN-44, C-SPAN2-45, CNBC-46)

8. Minneapolis, MN DMA

Minneapolis, MN

(CNBC-60, CNN Headline News-61, MSNBC-62, Fox News-63)

North Metro Area

(CNN-31, CNN Headline News-32, CNBC-33, Fox News-34)

Southwest Suburbs, Shakopee

(CNBC-60, CNN Headline News-61, MSNBC-62, Fox News-63)

9. New York DMA

Somerset County, NJ

(CNBC-36, FOX News Channel-37, CNN-38, CNN Headline News-39, MSNBC-40)

Monmouth County, NJ

(FOX News Channel-29, CNN Headline News-30, CNN-31, CNBC-33, MSNBC-34)

Mercer County, NJ

(FOX News Channel-55, CNN-56, CNN Headline News-57, MSNBC-59)

FOR PUBLIC INSPECTION

EXHIBIT C



Arthur R. Block
Senior Vice President,
General Counsel and Secretary

Comcast Corporation
One Comcast Center
Philadelphia, PA 19103-2838
Office: 215-286-7564 Mobile: 215-421-1000
Fax: 215-286-7794
ablock@comcast.com

June 6, 2011

David Boies, Esq.
Boies, Schiller & Flexner LLP
333 Main Street
Armonk, NY 10504

Stephen Diaz Gavin, Esq.
Patton Boggs LLP
2550 M Street, NW
Washington, D.C. 20037

Re: Bloomberg Television

Dear Messrs. Boies and Gavin:

I write in response to your letter dated May 26, 2011. Unless otherwise indicated, all capitalized terms have the same meaning as in your letter.

At the outset, I note that Comcast values its relationship with Bloomberg, and views Bloomberg as a respected business partner. Indeed, Comcast has voluntarily launched BTV to nearly 18 million subscribers in less than five years without any contractual obligation to do so. It has also voluntarily placed BTV in most of its systems on the same level of service on which it offers CNBC. Since the NBCUniversal transaction was announced in December 2009, Comcast has continued to expand BTV's distribution to over three million new subscribers.

Given this productive relationship, it is dismaying that Bloomberg has elected to make baseless allegations against Comcast.¹ Bloomberg's claim that Comcast is in violation of the FCC Order² is wholly without merit. At the most basic level, your letter is premised upon the faulty assumption that Comcast currently engages in a widespread practice of "neighborhooding" news or business news networks. This claim in turn rests entirely on a definition of a news "neighborhood" (four networks) of your own creation, which is at odds with the practices of Comcast and other MVPDs. Even more tellingly, BTV's definition of neighborhooding is inconsistent with Bloomberg's own advocacy before the FCC. The definition you propose would cause significant disruption to consumers and other cable networks beyond anything the FCC contemplated or could reasonably have required.

¹ Further, in light of your decision to resort to threats of litigation rather than commercial negotiations, it was inappropriate under the applicable rules of professional ethics for external counsel to Bloomberg to contact a Comcast businessperson directly, especially when Bloomberg was on notice that Comcast is represented by external counsel in this matter. In the future, please direct all communications to either Comcast's external or internal counsel, the latter of whom Mr. Boies should be familiar with from his prior representations of Comcast.

² See *In the Matter of Applications of Comcast Corp., General Electric Co., and NBC Universal Inc. For Consent to assign Licenses and Transfer Control of Licenses, Memorandum Opinion and Order*, 26 FCC Rcd 4238 (2011) (the "FCC Order").

June 6, 2011

David Boies, Esq.
Stephen Diaz Gavin, Esq.

Accordingly, we urge your client to reconsider its decision to file a complaint and instead invite your client to resume good faith commercial discussions with Comcast of the type that have been so mutually beneficial to both sides in the past.

A. The FCC Order

The FCC Order considered whether, *following the acquisition of NBCUniversal*, Comcast might have the incentive or ability to discriminate among programmers “on the basis of affiliation or non-affiliation.”³ The Commission ultimately adopted a condition prohibiting discrimination on the basis of affiliation or non-affiliation.⁴ The Commission also discussed and adopted the news neighborhooding condition in the context of that very focused discussion in the FCC Order.⁵

Comcast’s basic channel placements of BTV vis-à-vis CNBC and MSNBC were made long before Comcast ever acquired or proposed to acquire any interest in CNBC or MSNBC. Their respective channel positions are a result of this pre-acquisition history, not any discriminatory motive to advantage CNBC or MSNBC or disadvantage BTV. Accordingly, in pursuing its claims here, it is clear that Bloomberg is not attempting to remedy any discrimination arising out of the NBCUniversal transaction – the only potentially legitimate purpose of a merger condition – but is instead attempting to obtain *more favorable* treatment than it would ever have been entitled to absent that transaction.

In the end, this entire matter reflects nothing more than an attempt by Bloomberg – a multi-billion dollar financial services conglomerate that can and should stand on its own two feet in any negotiation – to manipulate the FCC process for its own narrow commercial gain.

³ See FCC Order, 26 FCC Rcd at 4287.

⁴ *Id.* at 4358.

⁵ It is Comcast’s position that the neighborhooding condition is prospective in nature, and only applies in the event Comcast engages in neighborhooding in the future. This is reflected in the forward-looking language of the FCC Order and the overall context of the FCC’s analysis, as well as in Bloomberg’s own advocacy before the Commission. See, e.g., FCC Order, 26 FCC Rcd at 4288 (“Our condition, however, would only take effect *if* Comcast-NBCU *undertook* to neighborhood its news or business news channels . . .”) (emphases added); see also June 21, 2010 Petition to Deny at 31 (arguing that “[a]bsent the merger, BTV would have expected Comcast to neighborhood its channel line-up quickly to compete with other MVPDs, and that such a transition would be fostered by Comcast’s conversion to digital cable”). Indeed, we do not see any jurisdictional basis for the FCC to address non-transaction-specific pre-acquisition conduct in a merger condition. See FCC Order, 26 FCC Rcd at 4249. Nevertheless, because Comcast does not currently engage in neighborhooding under the definition applied by both the FCC and the industry – except perhaps in a few pilot markets (where Bloomberg is included in the neighborhood) – it is not necessary to resolve this interpretive dispute in order to conclude that Bloomberg’s complaint is without merit.

B. The "Neighborhooding" Condition

The FCC Order provides that, if Comcast "now or in the future carries news and/or business news channels in a neighborhood," then it must include "all independent news and/or business news channels" in that neighborhood.⁶ It defines a news neighborhood as "a significant number or percentage of news and/or business news channels substantially adjacent to one another in a system's channel lineup."⁷ The Commission characterized this as a "narrowly tailored" condition and plainly did not contemplate that it was requiring Comcast to engage in widespread re-ordering of its channel lineups.⁸

Your letter contends, however, that the FCC Order requires Comcast to alter radically its channel lineups across the country. To support this claim, you propose an arbitrary definition of a news neighborhood as "four or more news channels consecutively placed or . . . four news channels located in any block of five adjacent channel positions." The notion that a collection of four channels constitutes a neighborhood for the purposes of the FCC Order is without merit for many reasons, some of the most obvious of which I will review.

First, no matter how one defines a "news and/or business channel," four channels constitute a small minority of such channels that Comcast frequently carries – and plainly an insufficient number to constitute a neighborhood. In all events, Bloomberg essentially conceded that a news neighborhood is far more than four channels in its own advocacy before the Commission. Specifically, Bloomberg cited to the Commission four MVPDs (Verizon, AT&T, Dish, and DirecTV) as examples of MVPDs who engage in "neighborhooding."⁹ Significantly, this list *did not* include Comcast. The MVPDs cited by Bloomberg have the following "neighborhoods":

- 15 consecutive news networks (Verizon)
- 14 out of 15 news networks (AT&T)
- 10 news networks within 11 channels (Dish Network)
- 10 news networks within 12 channels (DirecTV)¹⁰

Clearly, consistent with Bloomberg's prior advocacy, industry practice for "neighborhooding" requires far more than four consecutive (or nearly consecutive) channels.¹¹

⁶ FCC Order, 26 FCC Rcd at 4287-88.

⁷ *Id.* at 4288.

⁸ *Id.* at 4287-88.

⁹ June 21, 2010 Petition to Deny, Exhibit 3, at ¶ 94 (the "June 21 Marx Report").

¹⁰ Based on publicly available information, as of June 3, 2011.

¹¹ Note that elsewhere in the proceeding Bloomberg suggested that five networks are necessary to make up a neighborhood. See June 21 Marx Report, n. 86. Clearly, even Bloomberg has had a difficult time coming up with a consistent definition of a news neighborhood.

David Boies, Esq.
 Stephen Diaz Gavin, Esq.

Second, the four-network definition proposed by Bloomberg leads to nonsensical and incoherent results. If one were to adopt a four-network benchmark, then Comcast's channel lineups would frequently have not one but several "news neighborhoods," each with small groupings of news channels. Moreover, under this approach, BTV would *already* be in a news neighborhood in many of the markets identified in its March 10, 2011 letter to Comcast.

For example, Bloomberg demands to be included in a "four channel" neighborhood that it claims exists in the Greater Boston (Cambridge, Weymouth, Lexington, Waltham) lineup. (May 26, 2011 Letter, Exhibit A). This lineup consists of CNBC (46), C-SPAN (44), CNN Headline News (43), CNN (42) and Fox News (41). Yet, using its own definition, Bloomberg is *already* included in a neighborhood in this same channel lineup: MSNBC (251), CSPAN3 (249), C-SPAN2 (247), Bloomberg (246) and Weather Scan Digital (245). There are many more instances from your letter where Bloomberg demands to be repositioned despite already residing in a four-network "neighborhood." The reality, then, is that Bloomberg is not asking for BTV to be included in "a neighborhood," but instead is seeking to compel Comcast to move BTV from one "neighborhood" into another "neighborhood" of its choice.¹² The neighborhooding condition and the FCC Order do not support such cherry picking and game playing – especially, as discussed below, to the detriment of other networks and consumers.

Third, your analysis overlooks the fact that, in adopting a "narrowly tailored" condition, the FCC made clear that it did not intend to require a wholesale reorganization of Comcast's channel lineup across its 39-state footprint – which includes over one thousand different headends with widely varying channel lineups. Simply put, every time Comcast is forced to move one channel to a location where another channel is already resident, it sets off a cascading chain reaction of channel movements that ends with a significantly altered channel lineup, substantial confusion for subscribers, and hardship for the displaced channels. Comcast explained this in filings with the Commission.¹³ The absence of any discussion of this serious concern of consumer and channel disruption is just one indication that the FCC had in mind a *prospective* condition, not one that would cause upheaval in longstanding channel arrangements.

Finally, if Comcast were required to move BTV in order to comply with a "four channel" definition, then it could also be required to move a significant number of *other* news networks to comply with this definition, resulting in exponentially greater channel positioning disruption for consumers. In this situation, the FCC would likely see a flurry of complaints by entities that assert that they are news channels, *and* by networks that have been displaced and moved to other channels. Further, Comcast could find itself in an endless round of repositioning – all without having taken any action to create neighborhoods or prefer its own news channels since the close of the NBCUniversal transaction. We are confident that the FCC never intended the Order to cause the re-engineering of Comcast's existing channel lineups (and reversal of its historical editorial decisions) on anything like this scale, much less in the circumstances presented here.

¹² What makes this example even more absurd is that Bloomberg is within a supposed "neighborhood" that contains a Comcast-affiliated news channel (MSNBC). That can hardly be described as discriminatory treatment.

¹³ See e.g., October 22, 2010 Notice of Ex Parte Communication.

C. Negotiation History

In addition to the foregoing, your recounting of our recent discussions is inaccurate and misleading. I do not think it would be constructive to review in detail our discussions over the last three months. It is worth noting, however, that in all our discussions, we have expressed our willingness to work with Bloomberg in good faith as a partner – as evidenced by the major role Comcast has played in expanding BTV's distribution over the last few years. Notwithstanding these overtures, Bloomberg has flatly refused to engage in commercial negotiations, instead insisting that Comcast simply accede completely to its demands.

In particular, in our last discussion on April 4, Neil Smit reiterated our interest in pursuing commercial discussions with Bloomberg. Andy Lack responded that he was not interested in commercial discussions, but instead issued an ultimatum that Comcast implement Bloomberg's reposition demands in their totality. Dan Doctoroff went on to add that Bloomberg had spent "a lot of time and money" on the FCC process and it expected compliance with its misinterpretation of the FCC Order, no matter how absurd.

At the end of this call, Mr. Doctoroff proposed that the two parties' attorneys confer about their respective interpretations of the FCC Order. Mr. Smit agreed and forwarded contact information for Comcast's counsel to Mr. Doctoroff. Our counsel was never contacted by Bloomberg's counsel, however, nor were there further overtures from Bloomberg itself. Instead, we received no further communication for almost two months until you sent your complaint notice letter to Mr. Smit last week. This hardly reflects a constructive approach to our discussions.

* * *

Comcast continues to stand by its offer to engage in good faith commercial discussions with Bloomberg regarding this matter. We have been strongly supportive of BTV, as illustrated by our dramatic increase in carriage of BTV over the past five years. We believe that we can advance our partnership in ways that are beneficial for both partners and do not involve the substantial investment of time, effort and money involved in litigating a program carriage complaint. If your client wishes to engage in further commercial discussions, please have them contact Greg Rigdon at 215.286.2854 at your earliest convenience.

Very truly yours,



Arthur R. Block

cc: The Hon. Julius Genachowski, Chairman, Federal Communications Commission
The Hon. Michael J. Copps, Commissioner, Federal Communications Commission
The Hon. Robert M. McDowell, Commissioner, Federal Communications Commission
The Hon. Mignon L. Clyburn, Commissioner, Federal Communications Commission

FOR PUBLIC INSPECTION

EX PARTE OR LATE FILED

WILLKIE FARR & GALLAGHER LLP

MICHAEL H. HAMMER
202 303 1110
mhammer@willkie.com

1875 K Street, NW
Washington, DC 20006-1238
Tel: 202 303 1000
Fax: 202 303 2000

FILED/ACCEPTED

October 22, 2010

OCT 22 2010

VIA ELECTRONIC FILING

Federal Communications Commission
Office of the Secretary

ORIGINAL

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street S.W.
Washington, DC 20554

Re: *In the Matter of Applications of Comcast Corporation, General Electric Company and
NBC Universal, Inc. for Consent to Assign Licenses or Transfer Control of Licensees,*
MB Docket No. 10-56
REDACTED – FOR PUBLIC INSPECTION

Dear Ms. Dortch,

On October 22, 2010, Ryan Wallach and the undersigned, both of Willkie Farr & Gallagher LLP and representing Comcast Corporation ("Comcast"), spoke by telephone with Marcia Glauberman and Nicole McGinnis of the Media Bureau. During the call, we reviewed the points set forth herein that respond to certain arguments and assertions made by Bloomberg L.P. ("Bloomberg") in this proceeding.

* * *

On September 30, 2010, Bloomberg filed an ex parte letter asserting that a neighborhood condition requiring Comcast to completely restructure its channel lineups "can be accomplished with minimum of disruption to customers" and is "easy to implement."¹ Bloomberg, which recently has realized substantial distribution growth on Comcast and is distributed in full conformity with the carriage agreement it negotiated with Comcast,² vastly understates the impact of its proposed condition

¹ See Letter from Stephen D. Gavin, Counsel to Bloomberg, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56, at 2 (Sept. 30, 2010) ("Bloomberg September 30 Letter"). On October 15, 2010, Bloomberg followed up that ex parte with meetings with the Commissioners and their staffs, and reiterated its claims that "neighborhooding" "is easily implemented . . . and does not impose burdens on Comcast." See, e.g., Letter from Stephen D. Gavin, Counsel to Bloomberg, to Marlene H. Dortch, Secretary, FCC, MB Docket No. 10-56, at 2 (Oct. 18, 2010).

² Through an amendment to the carriage agreement that Bloomberg freely negotiated {{ }}, Bloomberg TV's distribution on Comcast's systems has soared from approximately {{ }} subscribers in 2008 to almost {{ }} today.

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